

Serial No.: 09/940,509  
Docket No.: 49335.0700

## REMARKS

Applicants reply to the Office Action mailed June 30, 2005, along with submitting a request for a two month extension of time, if necessary. As discussed with patent agent Mark Levenda on November 28, 2005, the Examiner agreed to re-issue the Office Action and re-start the date for reply because the Office Action did not address the arguments in Applicants' last Reply dated March 11, 2005. As such, Applicants assert that this Reply should be considered timely filed. Claims 1-76 were pending in the application and the Examiner rejects claims 1-76. Support for the amendments may be found in the originally filed specification, claims, and figures. No new matter has been introduced by these amendments. Reconsideration of this application is respectfully requested.

### Rejections under 35 U.S.C. §103(a)

The Examiner rejects claims 1-76 under 35 U.S.C. 103(a) as being unpatentable over King, U.S. Patent Number 6,148,293 ("King") in view of Sandretto, U.S. Patent Number 5,812,988 ("Sandretto") in further view of Ginsberg, U.S. patent No. 6,754,639 ("Ginsberg"). Specifically, the Examiner asserts that King discloses a method for enabling investors to participate in market activity and preserve principal. Applicants respectfully traverse these rejections.

King discloses creating, servicing and paying loans between a lender and borrower. Specifically, King is limited to a method for implementing a long-term adjustable rate loan program to reduce risk to both lender and borrower through fund transfer into one or more investment accounts. The investment accounts provide security to the lender in that such funds assure payment of the principle and interest during the life of the funds. King further discloses readjusting the interest rate annually in relation to a minimum and maximum rate as agreed to by the borrower and lender, as well as the current government rate and non-callable fixed rate investment securities. The above rates are used in calculating the interest rate for the load over the subsequent year.

King is also limited to a method wherein a loan agreement between a lender and a borrower is maintained by providing assurance that the principle and interest during the term of the loan is secured by one or more investment accounts. King offers an investment instrument in the form of a loan which is secured by non-callable fixed rate investment securities. Fixed rate investment securities inherently provide a guaranteed principal. Therefore, King does not

Serial No.: 09/940,509  
Docket No.: 49335.0700

disclose a means for securing principle in an investment because the principle is already inherently preserved by the investment instrument. Specifically, if one were to use the method of King to secure interest payments on a loan, yet substitute the teaching of using an investment security with an investment in a market index (e.g., S&P 500, NASDAQ and DOW), King would be rendered inoperable in regard to its intended purpose. In other words, King is directed toward providing a loan with a guaranteed interest being supplied by an investment in a government security. No such guarantee can exist under the King model when using an investment in a market index, rather than an investment security. King specifically discloses the use of a government security as the investment instrument, because otherwise the lender would not be assured receipt of interest payments over the life of the loan.

In regard to King, the Examiner states that, "A return-generating model is disclosed based on the activity of at least one market index" (page 2, item 2). Applicants agree that King discloses calculating the terms of a loan based on the activity of a securities market. Specifically, the loan interest rate of King is calculated on a yearly basis from the current yield of a security and the number of years remaining to maturity. However, this is not synonymous with the Applicants' disclosure wherein a return generating model is based on an investor's market participation level, rather than on the activity of the market itself. As such, King does not disclose or suggest at least, "allowing, via said host computer, said purchaser of said investment instrument to select a return-generating model for said investment instrument from at least two different return-generating models, at least one of said return-generating models being based on at least one of full and partial investment in a market index," (emphasis added) as similarly recited in independent claims 1, 23, 45 and 54.

Sandretto is limited to a method and apparatus for estimating asset values under varying market conditions. The models as disclosed by Sandretto comprise pre-determined scenarios which are used in computing estimated financial statements, estimated cash flows, and inflation-adjusted cash flows for two or more assets. Specifically, Sandretto is limited to an asset model, economic model, asset cash flow model, discounting model, simulated return model and a risk-return type model. The various models of Sandretto are limited to performing a simulation to predict future behavior, wherein the simulation may help an investor to better understand how market conditions may affect their asset and investment values.

Serial No.: 09/940,509  
Docket No.: 49335.0700

Ginsberg generally discloses a system for tracking and managing fixed income portfolios. Specifically, the Ginsberg system attempts to overcome the limitations of the prior art, wherein actual performance of an investment portfolio, market trends and market conditions have been difficult to predict. The Ginsberg system provides select processing of various data items extracted from real-time market activity. The data is qualified and translated into a term structure of interest rates for a hypothetical portfolio.

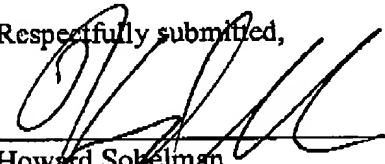
As argued above in reference to King, neither Sandretto, Ginsberg, nor any combination thereof, disclose or suggest at least "allowing, via said host computer, said purchaser of said investment instrument to select a return-generating model for said investment instrument from at least two different return-generating models, at least one of said return-generating models being based on at least one of full and partial investment in a market index," (emphasis added) as similarly recited in independent claims 1, 23, 45 and 54.

All of the dependent claims variously depend from independent claims 1, 23, 45 and 54, so Applicants assert that the dependent claims are differentiated from the cited references for at least the reasons set forth above for differentiating the independent claims from the cited references, as well as in view of their own respective features.

In view of the above remarks and amendments, Applicants respectfully submit that all pending claims properly set forth that which Applicants regard as their invention and are allowable over the cited prior art. Accordingly, Applicants respectfully request allowance of the pending claims. The Examiner is invited to telephone the undersigned at the Examiner's convenience, if that would help further prosecution of the subject Application. Applicants authorize and respectfully request that any fees due be charged to Deposit Account No. 19-2814.

Dated: November 29, 2005

Respectfully submitted,

  
Howard Sobelman  
Reg. No. 39,038

**SNELL & WILMER L.L.P.**  
400 E. Van Buren  
One Arizona Center  
Phoenix, Arizona 85004  
Phone: 602-382-6228  
Fax: 602-382-6070  
Email: [hsobelman@swlaw.com](mailto:hsobelman@swlaw.com)